

ARKANSAS CEMETERY ACT
FOR
PERPETUALLY MAINTAINED CEMETERIES



Published by
ARKANSAS SECURITIES DEPARTMENT
Heritage West Building, Suite 300
201 East Markham
Little Rock, Arkansas 72201

ARKANSAS CODE ANNOTATED
CEMETERY ACT
FOR
PERPETUALLY MAINTAINED CEMETERIES
(EFFECTIVE AUGUST 12, 2005)

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20-17-1001. Title.

This subchapter may be cited as the "Cemetery Act for Perpetually Maintained Cemeteries".

20-17-1002. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "Board" means the Arkansas Cemetery Board;
- (2) "Care and maintenance" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery;
- (3) "Cemetery" means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains. It may be either a burial park for earth interments, a mausoleum for vault or crypt interments, or a combination of one (1) or more thereof;
- (4) "Cemetery company" means an individual, partnership, corporation, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery or making an application with the board to own or control the lands or conduct the business;
- (5) "Columbarium" means a structure or room or space in a building or structure used, or intended to be used, for the interment of cremated human remains;
- (6) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person;
- (7) "Interment" means any lawful disposition of the remains of a deceased person as provided by law;
- (8) "Lot or grave space" means a space of ground in a cemetery used or intended to be used for interment therein;
- (9) "Mausoleum" means a community-type structure or room or space in a building or structure used, or intended to be used, for the interment of human remains in crypts or niches;
- (10) "Niche" means a space in a columbarium which is used, or intended to be used, for the interment of the cremated remains of one (1) or more deceased persons;
- (11) "Permit holder" means any cemetery company that holds a permit issued by the board to own or operate a perpetual care cemetery;

- (12) "Perpetual care cemetery" means a cemetery for the benefit of which a perpetual care fund has been established in accordance with the provisions of this subchapter; and
- (13) "Secretary" means the Securities Commissioner.

20-17-1003. Application of subchapter - Exceptions.

- (a) This subchapter applies to all cemeteries and burial grounds located in the State of Arkansas unless the cemetery is owned and operated by:
 - (1) A church or similar religious organization;
 - (2) A municipality or county government;
 - (3) A family, exclusively for its own family use; or
 - (4) A community nonprofit association in which no person is entitled to receive pecuniary profit other than the bookkeeper and maintenance crew.
- (b) Persons who do not and have never received more than two thousand dollars (\$2,000) gross proceeds in any one (1) year from the sale of parcels of realty to be used as human burial sites are exempt from the provisions of this subchapter.
- (c) All cemeteries who advertise or operate all or part thereof as perpetual care or permanent maintenance cemeteries shall be subject to this subchapter regardless of the organization of the person or group owning and operating the cemetery or burial grounds.

20-17-1004. Arkansas Cemetery Board - Creation - Members.

- (a) The Arkansas Cemetery Board is to consist of seven (7) members selected as follows:
 - (1) The Arkansas Securities Commissioner, or his designated deputy, shall be a voting member of the board;
 - (2) Six (6) members shall be appointed by the Governor for terms of four (4) years:
 - (A) Four (4) of the six (6) members of the board appointed by the Governor shall be owners or operators of licensed cemeteries in this state, and these members shall be appointed from lists of five (5) names for each appointment to be made which are submitted to the Governor by the Arkansas Cemetery Association;

- (B) One (1) member shall be appointed by the Governor and shall be a citizen of the State of Arkansas, of good character, and a qualified elector, but this person shall not have any interest in a cemetery or funeral home either within or without the State of Arkansas; and
 - (C) One (1) member shall be sixty (60) years of age or older, appointed from the state at large, subject to the confirmation of the Senate, and shall represent the elderly. This member shall not be actively engaged in or retired from any profession or occupation which is regulated by the board.
- (b) (1) The Governor shall appoint one (1) alternate board member for the same term and having the same qualifications as a regular board member. This member shall substitute for any regular board member when a conflict of interest disqualifies a regular board member.
- (2) Whenever a matter comes before the board involving a cemetery in which any board member has a financial interest, then the board member shall be disqualified from participating in the discussion or vote on the matter, and the alternate board member shall substitute for the disqualified board member in that instance only.
- (c) Vacancies on the board due to death, resignation, or other cause of any appointive member shall be filled by appointment of the Governor for the unexpired portion of the term in the same manner as was required for the initial appointment.
- (d) Members of the board shall serve without pay or other compensation for their services except that board members may receive expense reimbursement and stipends in accordance with §25-16-901 et seq.

20-17-1005. Arkansas Cemetery Board - Proceedings.

- (a) Any action taken by the Arkansas Cemetery Board shall be by the majority vote of the board members who are present at the meeting when the action is taken.
- (b) The cemeterian member of the board with the greatest seniority on the board shall be chairman of the board, but if the person declines the chairmanship, then the cemeterian with the next highest seniority on the board shall be chairman.
- (c) Four (4) members of the board shall constitute a quorum.
- (d) The board shall meet subject to call of the chairman or upon written demand of any two (2) members.

- (e) Any order by the board under the provisions of this subchapter shall be subject to review by the Circuit Court of Pulaski County or in the county wherein any part of the cemetery lies, provided that an application for review of such order is made within thirty (30) days of the date of the order.

20-17-1006. Arkansas Cemetery Board - Powers and duties.

The Arkansas Cemetery Board shall have the authority to:

- (1) Conduct at any time and from time to time such reasonable periodic, special, or other examination of any cemetery or cemetery company, including, but not limited to, an examination of the physical condition or appearance of the cemetery, the financial condition of the company and any trust funds maintained by the company, and such other examinations as the board or secretary deems necessary or appropriate in the public interest. The examinations shall be made by members or representatives of the board or by a certified public accountant or registered public accountant as authorized in § 20-17-1007;
- (2) Issue or amend permits to operate a cemetery in accordance with the provisions of this subchapter;
- (3) Suspend or revoke permits to operate a cemetery when any cemetery fails to comply with the provisions of this subchapter, rules promulgated pursuant to this subchapter, or any order of the board;
- (4) Make rules, regulations, and forms to enforce the provisions of this subchapter;
- (5) Require every cemetery company to observe minimum accounting principles and practices and make and keep such books and records in accordance therewith for such period of time as the board may by rule prescribe;
- (6)
 - (A) Subpoena witnesses, books, and records in connection with alleged violations of this subchapter or rules or orders of the board. The secretary of the board with the approval of the chair or two (2) board members may issue subpoenas.
 - (B) In case of contumacy by or refusal to obey a subpoena issued to any person, the Circuit Court of Pulaski County, upon application by the board, may issue to the person an order requiring him or her to appear before the board or the person designated by the board. Failure to obey the order of the court may be punished by the court as a contempt of court;
- (7) Require additional contributions to the permanent maintenance fund of the cemetery where provided for in this subchapter, including, but not limited to, contributions not to exceed three thousand dollars (\$3,000) whenever any

cemetery company fails to properly care for and maintain or preserve the cemetery;

- (8) (A) Apply to the Chancery Court of Pulaski County to enjoin any act or practice and to enforce compliance with this subchapter or any rule, regulation, or order pursuant to this subchapter whenever it appears to the board, upon sufficient grounds or evidence satisfactory to the board, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this subchapter or any rule or regulation pursuant to it.
- (B) The court may not require the board to post a bond;
- (9) Apply to the chancery court of the county in which the cemetery is located for appointment of a receiver or conservator of the cemetery corporation or its permanent maintenance fund when it appears to the board that a cemetery corporation is insolvent or that the cemetery corporation, its officers, directors, agents, or the trustees of its permanent maintenance fund have violated this subchapter and the rules promulgated under it or have failed to comply with any board order; and
- (10) Increase, in accordance with regulations adopted by the board, the percentage of the gross proceeds of the sale of any grave space, crypt, niche, or similar entombment required to be deposited into the permanent maintenance fund of the cemetery in accordance with § 20-17-1016 whenever it is determined that the principal of the permanent maintenance fund is or will be insufficient to generate enough income to operate and maintain the cemetery.

20-17-1007. Examination of cemetery.

- (a) (1) (A) Each cemetery company examined in accordance with § 20-17-1006 shall pay to the Arkansas Cemetery Board a fee for each examination as the board shall by rule prescribe.
- (B) In addition, the cemetery company shall pay to the board the amount of expenses and stipends paid by the board to any board member examining the physical condition or appearance of a cemetery when the examination is ordered by the board on its own motion or on request of an interested individual.
- (2) However, all examinations shall be conducted by a single examiner or board member, and the examinations shall be conducted only pursuant to an order of the board.
- (b) (1) In lieu of any financial examination which the board shall be authorized to make, the board may accept the audit of an independent certified public

accountant provided that the secretary has notified the cemetery company that the audit would be accepted and that the cemetery company has notified the secretary in writing that an audit would be prepared.

- (2) The costs of the audit shall be borne by the cemetery company, and the scope of the audit shall be at least equal to the scope of the examination required by the board.

20-17-1008. Permit - Application.

- (a)
 - (1) Prior to making application to the Arkansas Cemetery Board for a permit to establish and operate a new cemetery or for the extension of the boundaries of an existing cemetery, the person proposing to make application shall cause to be published weekly for three (3) weeks in a newspaper of general circulation in the county in which the proposed cemetery is located a notice that an application will be filed with the board to establish or extend the boundaries of a cemetery in the county.
 - (2) The publication must contain a legal description of the land to be used as a cemetery and a statement that any individual or group of individuals desiring to protest the establishment or extension of the cemetery may do so by filing a statement in writing with the board.
- (b)
 - (1) Whenever it is proposed to locate a new cemetery or extend the boundaries of an existing cemetery under the provisions of this subchapter, then the cemetery company so proposing shall file an application for the issuance of a permit with the board.
 - (2) The application shall describe accurately the location and boundaries of the proposed cemetery or addition.
 - (3) The application must be accompanied by:
 - (A) The recommendation of the mayor or governing official of the municipality if the cemetery is to be located within the corporate limits of a municipality or the recommendation of the county judge of the county within which the cemetery is to be located if outside the corporate limits of a municipality. The recommendation shall state the need and desirability of the proposed cemetery or extension. This recommendation shall be in lieu of the application and permit required in § 20-17-903;
 - (B)
 - (i) A fee of one thousand five hundred dollars (\$1,500) for filing an application for a new cemetery; or

- (ii) A fee of four hundred dollars (\$400) for filing an application to extend the boundaries of an existing cemetery;
 - (C) A survey and map of the cemetery or extension;
 - (D) A set of rules and regulations for the use, care, management, and protection of the cemetery;
 - (E) The proposed method of establishing a permanent maintenance fund;
 - (F) Proof of publication as set forth in subsection (a) of this section of the required notice of intention to apply with the board;
 - (G) A copy of a current title opinion by an Arkansas-licensed attorney or title insurance policy which reflects that the applicant has or will have good and merchantable title to the land covered by the permit or extension;
 - (H) A notarized statement disclosing any current or future lien or mortgage on the land covered by the permit;
 - (I) A notarized statement from any current or future lienholder or mortgage holder on the land covered by the permit or extension that all paid-in-full burial spaces will be released from the lien or mortgage at least semi-annually;
 - (J) A copy of the perpetual care trust agreement if the application is for a new cemetery permit;
 - (K) A current balance sheet of the applicant prepared by an independent certified public accountant in accordance with generally accepted accounting principles which reflects the applicant has a minimum of twenty thousand dollars (\$20,000) net worth; and
 - (L) Any other evidence which would tend to show a public need for the proposed cemetery or extension may be included, such as a petition from landowners in the county who believe that a need exists for any additional cemetery or extension.
 - (M) The burden of establishing public need shall be upon the applicant.
- (c) All applications shall be made under oath and filed with the secretary of the board not less than twenty (20) days prior to the board meeting at which the application is to be considered.

- (d) The board shall have authority to require any cemetery company to submit additional information as it may by rule or order prescribe.

20-17-1009. Permit - Investigation by Department of Health.

- (a) Upon receipt of an application for the issuance of a permit for a new cemetery or for an extension of the boundaries of an existing cemetery, the Arkansas Cemetery Board shall cause the Department of Health to make an investigation of the proposed cemetery location or extension, with respect to a sanitary viewpoint.
- (b) The department in making the investigation shall take into consideration the proximity of the proposed cemetery, or extension, to human habitation, the nature of the soil, the drainage of the ground, the danger of pollution of springs or streams of water, and such other conditions as would bear upon the situation.
- (c) Having completed this investigation, the department shall promptly submit in writing its approval or disapproval from a sanitary standpoint to the board. In the event that the department disapproves the proposed cemetery location or extension, further action on the application shall be suspended until the applicant acquires a location which meets with the approval of the department or until other action, as necessary, is taken.
- (d) The cemetery shall pay the department any fee required by law.

20-17-1010. Permit - Investigation and issuance by the Arkansas Cemetery Board.

- (a) If the cemetery company has fully complied with all the provisions of this subchapter and if the Department of Health approves the location of the new cemetery or the extension of the boundaries of an existing cemetery, then the application shall be submitted to the Arkansas Cemetery Board for investigation and for approval or disapproval.
- (b) The board shall, immediately upon the submission of each application, make such investigation as shall enable it to determine the fitness of the cemetery company, the need for the cemetery, and all other questions bearing directly or indirectly upon the need or desirability from the public standpoint of the proposed cemetery or extension.
- (c) (1) If the application for a new cemetery is approved, the board shall issue a permit to the applicant only after the applicant has filed proof with the board that an initial principal deposit of at least five thousand dollars (\$5,000) has been made to the permanent maintenance fund. This initial five thousand dollars (\$5,000) can be used to meet the liability due the

permanent maintenance fund for the first paid-in-full burial space sales sold by the permit holder.

- (2) The permit shall be filed in the court of the county in which the cemetery is located and with the department.

20-17-1011. Permit - Amendment.

- (a) Whenever it is proposed that any cemetery subject to the provisions of this subchapter amend its present permit, whether for construction of a mausoleum, reduction or increase in percentage of gross sales proceeds to be placed in the permanent maintenance fund, or other amendment, then the cemetery company shall file an application for amendment of the permit.
- (b) The application shall be accompanied by:
 - (1) A fee of four hundred dollars (\$400);
 - (2) A statement of each proposed amendment;
 - (3) Statements, documents, and other information necessary to provide justification for the amendment;
 - (4) If the amendment is for construction of a mausoleum or similar structure, the application shall also include:
 - (A) Plans and specifications of the structure;
 - (B) A report of inspection of the plans by the Division of Health of the Department of Health and Human Services;
 - (C) A copy of the sales contracts and conveyance documents proposed to be used;
 - (D) A proposed contribution to the permanent maintenance fund;
 - (E) A statement of whether the amount of the sales force will be utilized and of how preconstruction sales and interments will be handled;
 - (F) The location of the proposed structure;
 - (G) The estimated completion date;
 - (H) Either of the following, when sales proceeds may be received by the cemetery company prior to completion of construction and payment in full of the structure:

- (i) An executed escrow agreement approved by the board with a federally insured financial institution or other financial institution approved by the Arkansas Cemetery Board which provides among other things that one hundred percent (100%) of the sales proceeds collected prior to the completion and payment in full of the structure will be placed into escrow; or
- (ii)
 - (a) An executed copy of the construction agreement for the structure which sets forth the total construction cost and the date the construction will be completed with either an executed irrevocable letter of credit from a federally insured financial institution or other financial institution approved by the board equal to one hundred twenty-five percent (125%) of the total cost of the structure, a cash bond posted with a federally insured financial institution or other financial institution approved by the board equal to one hundred thirty percent (130%) of the total cost of the structure, or a construction performance bond payable to the board in the amount equal to the total cost of the structure as set forth in the construction agreement.
 - (b) All letters of credit and bonds, and their issuers, must be approved by the board. The letter of credit shall state that the funds provided shall be paid to the board for the purpose of completing the construction of the structure or paying in full the completed structure if not done prior to the completion date set forth in the construction agreement. The construction performance bond shall state that the insurer shall advance the funds necessary to complete the construction of the structure or pay for the completed structure, if not done prior to the date set forth in the construction agreement. The cash bond shall provide that the financial institution shall pay the cash proceeds of the bond upon order of the board. The letters of credit or construction bonds shall state that if the structure is not completed and paid for in full within the maximum time provided for construction under this section, such letters of credit and bonds shall be used to complete and pay for the structure.

- (I) Certification of an estimated start date for construction to take place no later than thirty-six (36) months after the date of the permit and further certifying completion within five (5) years after the date of such permit unless extended for good cause by the board; and
 - (J) Other information necessary to show that construction will be done in a good and workmanlike manner and be fireproof; and
- (5) Other information as the board may by rule or order require.
- (c) Eight (8) complete copies of the application for the amendment of the permit must be filed with the secretary at least twenty (20) calendar days prior to the meeting at which the board will consider the application.

20-17-1012. Permit - Transfer of ownership.

- (a) (1) Whenever any change is proposed in the controlling interest or ownership of any perpetual care cemetery or any cemetery company or any organization that, directly or indirectly, owns a controlling interest in the cemetery company, the cemetery company that holds the current permit and the individual or organization proposing to obtain ownership or gain control shall file an application for the issuance of a new permit with the Arkansas Cemetery Board.
- (2) The application shall be accompanied by:
 - (A) A fee of one thousand five hundred dollars (\$1,500);
 - (B) A statement of changes, if any, in the survey and map of the cemetery;
 - (C) A set of rules and regulations for the use, care, management, and protection of the cemetery;
 - (D) The proposed method of continuing the permanent maintenance fund presently in existence;
 - (E) A statement of the proposed transfer;
 - (F) A copy of a current title opinion by an Arkansas-licensed attorney or title insurance policy that reflects that the current permit holder has good and merchantable title to the land covered by the permit;
 - (G) A notarized statement from the seller and purchaser disclosing any current or future lien or mortgage on the land covered by the permit;

- (H) A notarized statement from any current or future lienholder or mortgage holder on the land covered by the permit that all paid-in-full burial spaces will be released from the lien or mortgage at least semiannually;
 - (I)
 - (i) A current detailed accounting of all paid-in-full merchandise contracts or accounts of the permit holder and seller for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser.
 - (ii) This accounting shall be on an individual contract or account basis and contain the name of the purchaser, the contract or account number, the date of the contract, the gross amount of the contract, a description of the merchandise purchased, the date the contract or account was paid in full, and the specific location where the merchandise is stored;
 - (J) A current notarized statement from the permit holder and seller that the application contains a complete and accurate accounting of all his or her outstanding accounts receivable, discounted notes and paid-in-full merchandise accounts or contracts for which the merchandise has not been delivered to the purchaser or placed in inventory for the benefit of the purchaser;
 - (K) A current notarized statement from the purchaser or organization gaining control that it will assume the responsibility and liability for all the accounts, notes and contracts of the seller that are contained in the accountings and schedules that are filed as a part of the application;
 - (L) The financial statements of the applicant and purchaser required by the rules which reflect that the applicant and purchaser has a minimum net worth of twenty thousand dollars (\$20,000); and
 - (M) Any additional information required by the board or the secretary of the board.
- (b) Each vendor or the transferor of the cemetery company or interest therein shall remain liable for any funds and transactions up to the date of the sale or transfer.
 - (c)
 - (1) Prior to the sale or transfer, the vendor or the transferor shall notify the board of the proposed sale or transfer and shall submit to the board, under oath, any document or record the board may require in order to demonstrate that the vendor or transferor is not indebted to the permanent maintenance fund.

- (2) After the transfer of ownership or control, the vendor or transferor must present to the board proof of currency in the permanent maintenance fund.
 - (3) The board may additionally require the presentation of proof of the continued current status of the permanent maintenance fund by the vendee or transferee for such reasonable period of time as the board may determine to be necessary in the public interest.
 - (4) The board is further authorized to recover from that vendor or transferor or vendee or transferee, for the benefit of the permanent maintenance fund, all sums that the vendor or transferor or vendee or transferee has not properly accounted for and paid into the trust fund, together with reasonable expenses incurred by the board by bringing this action.
- (d) The cemetery company that has been issued a permit to operate a cemetery under the provisions of this subchapter shall remain liable for the maintenance and care of the cemetery and all amounts due the permanent maintenance fund until a new permit is issued to the vendee or transferee.
 - (e) No new permit shall be issued to the vendee or transferee of any cemetery until that vendee or transferee complies with this subchapter and the board orders a new permit to be issued to the vendee or transferee.
 - (f) Any vendor or transferor or vendee or transferee who violates the provisions of this section shall be guilty of a violation and upon conviction shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for the violation.

20-17-1013. Permanent maintenance fund generally.

- (a)
 - (1) The permanent maintenance fund is declared to be a trust fund for the purpose of administration, care, and maintenance of the cemetery, including lots, graves, spaces, crypts, niches, burial rights, or otherwise.
 - (2) The net income from the fund shall be paid to and be exclusively used and expended by the owners, managers, or officers and directors of the cemetery company for the care and maintenance of the cemetery and for no other purpose.
 - (3) The principal of the fund shall be invested and remain invested in such securities and funds as are permitted by the laws of Arkansas for the investment of policy reserves of life insurance companies as set forth in § 23-60-101 et seq., as now or hereafter amended, and in the common trust funds of state or national banks.

- (4) However, any permanent maintenance fund having assets of more than two hundred fifty thousand dollars (\$250,000) may invest not more than fifty percent (50%) of its assets in nonassessable common stocks which are listed on a national securities exchange, preferred stocks meeting the requirements of § 23-63-815, as now or hereafter amended, and investment trust securities meeting the requirements of § 23-63-820, and the diversification restrictions of § 23-63-805 as now or hereafter amended shall not apply to investments in investment trust securities.
 - (5) In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income and capital appreciation as well as the probable safety of their capital.
- (b) The permanent maintenance fund is authorized by this subchapter, and all sums paid into it or contributed to it shall be deemed to be for charitable and eleemosynary purposes.
- (c) The rule against perpetuities shall not be applicable to funds as mentioned in this section.
- (d) The trust fund shall be established by executing a written trust agreement approved by the Arkansas Cemetery Board. The agreement may provide that the cemetery company may change the trustee of its trust fund so long as the successor trustee is in accordance with § 20-17-1014 and the present trustee and successor trustee are parties to the amendment of the agreement.
- (e) The trustee must maintain at a minimum the following:
 - (1) A general ledger and general journal or comparable books of entry showing all receipts, disbursements, assets, liabilities, and income of the trust fund;
 - (2) Documents supporting and verifying each asset of the trust fund; and
 - (3) A trust agreement.
- (f) In establishing a permanent maintenance fund, the cemetery company may from time to time adopt plans for the general care and maintenance of its cemetery.

20-17-1014. Permanent maintenance fund - Trustees.

Each cemetery company subject to this subchapter shall establish or transfer the permanent maintenance fund, the income from which can only be used for general maintenance, administration, and preservation of the cemetery, to:

- (1) A state or national bank with trust powers; or
- (2) Three (3) trustees, only one (1) of whom may have any direct or indirect financial or pecuniary interest in the cemetery, provided all trustees who make disbursements from the trust fund shall furnish a fidelity bond with corporate surety thereon, payable to the trust fund, in a penal sum not less than one hundred percent (100%) of the value of the trust fund principal at the beginning of each calendar year. This bond shall be deposited with the Arkansas Cemetery Board; or
- (3) An individual trustee, who in behalf of the cemetery company, shall deposit designated permanent maintenance funds directly into a savings account or certificate of deposit in a state or national bank or savings and loan association in this state not less than forty-five (45) days after collection, provided:
 - (A) All funds so deposited are federally insured;
 - (B) The funds are restricted so that the principal amount of the funds cannot be withdrawn without the written approval of, and on a form approved by, the Secretary of the Arkansas Cemetery Board; and
 - (C) Not less than once a year, interest from the funds may be withdrawn by the individual trustee in behalf of the cemetery company for purposes permitted by this subchapter.

20-17-1015. Permanent maintenance fund - Annual report.

- (a) Within sixty (60) days after the end of each calendar year, the Arkansas Cemetery Board shall require the trustee of the permanent maintenance fund to file, under oath, a detailed annual report of the condition of the fund, setting forth the description of the assets of the fund, a description of any property upon which any security constitutes a lien, the cost of acquisition of the asset, the market value of any asset at the time of its acquisition with the current market value of the asset and its status with reference to default, and stating that they are not in any way encumbered by debt, that none of the assets of the fund constitute loans to the cemetery company for which the trust fund is established or to any officer or director thereof, and any other information the trustee or the board deems pertinent.

- (b) The report shall show the amounts of principal and undistributed income of the fund at the beginning of the period, the amounts deposited by the cemetery company into the fund during the period, the income earned and disbursements made during the period, the details of any investment or reinvestment during the period, and the balances of principal and income at the end of the period being reported on.
- (c)
 - (1) If the trustee of the fund fails to meet the requirements of this section, then it shall be the duty of the board to apply to the Chancery Court of Pulaski County for an order to require the trustee of the fund to file a proper report and to make any additional contributions due to the failure to timely file the annual report.
 - (2) If funds have been misappropriated by the trustee or are not being handled as required by law, then the board shall apply to the chancery court in the county in which the cemetery is located to have a receiver or conservator appointed by the court to take custody of the trust funds for the benefit of the cestui que trust. The receiver or conservator is vested with full power to file such suits against the defaulting trustee as may be necessary to require a full accounting and restoration of the trust funds and to turn the residue over to another trustee as the cemetery shall select, in conformity with this subchapter, as the new trustee of the permanent maintenance fund.
 - (3) Failure by the trustee to make a timely filing of the annual report required by subsection (a) of this section shall be grounds for the trustee to pay an additional contribution to the permanent maintenance fund of fifty dollars (\$50.00) per day until the report is filed with the board.

20-17-1016. Permanent maintenance fund - Required deposits.

- (a) Each cemetery company shall deposit not less than ten percent (10%) of the gross proceeds of each sale into the permanent maintenance fund, provided cemetery companies selling crypts, niches, or similar entombments shall be required to deposit into a permanent maintenance fund an amount not less than the Arkansas Cemetery Board shall by order require if the cemetery company can demonstrate to the board that such lesser amount will be sufficient for perpetual maintenance and upkeep.
- (b)
 - (1) The deposit shall be made by the cemetery company not later than forty-five (45) days after the final payment has been made.
 - (2) However, any cemetery company making sales on installment sales contracts shall deposit the required percentage in accordance with the following:

- (A) If the cemetery company receives installment payments directly and if adequate records are maintained as to the full amount of sale, the receipts received, and the balance due, then the cemetery company shall deposit the required percentage of gross proceeds of sale into the permanent maintenance fund not later than the forty-fifth day after the final payment is made, or the cemetery company may deposit the required percentage of each amount received not later than the forty-fifth day after each installment payment by the purchaser; and
- (B)
 - (i) If the cemetery company elects to discount the installment sales contracts at a bank or other financial institution and receive a discounted value immediately in cash, the required percentage of the gross sales price shall be placed in a separate restricted escrow account at the time that the contract is discounted.
 - (ii) The amount so placed in escrow shall not be withdrawn until the lot purchaser defaults on or fully satisfies his contract obligations.
 - (iii) This restricted escrow account may be used by the bank or other financial institution as a part of its required reserve and may be used as recourse if the lot purchaser defaults on the contract.
 - (iv) Upon default, the required percentage of the gross sales price which was placed in this escrow account may be withdrawn and used by the cemetery company.
 - (v) Once final payment has been made, the required percentage of the gross sales price which was placed in an escrow account shall be withdrawn and placed immediately into the permanent maintenance fund.
 - (vi) If the cemetery corporation enters into an agreement with the bank or other financial institution, which in the secretary's determination adequately provides for the safeguards set forth in subdivision (b)(2)(A) of this section, then the provisions of that subdivision shall not be applicable to the cemetery corporation.
- (3) If a cemetery company gives away a grave space or sells a grave space for a price less than the current market price, the gross sales proceeds received for a similar grave space in the immediately adjacent or similar location in the cemetery in a recent arms-length transaction shall be used

as the basis to make the required permanent maintenance fund contribution for such gift or reduced price sale.

- (c) (1) If the cemetery company fails to make the required deposits in accordance with this section or if the moneys placed in escrow are not deposited as required by this chapter, then the cemetery company shall be liable for and the board may collect as an additional contribution to the permanent maintenance fund the sum of ten dollars (\$10.00) per day but in no instance in amounts to exceed a total of five thousand dollars (\$5,000) or the actual cost of the contract property or cemetery lots, whichever is greater, for the period of the failure.
- (2) Upon the refusal of the cemetery company to pay the board the penalty, the board may institute suit to recover the contribution and costs and such other relief as the state in its judgment deems proper and necessary.

20-17-1017. Permanent maintenance fund - Voluntary contributions.

The permanent maintenance fund may also receive, take, and hold therefor and as part thereof or as incident thereto any real, personal, or mixed property bequeathed, devised, granted, given, or otherwise contributed to it.

20-17-1018. Permanent maintenance fund - Penalties.

- (a) In addition to the civil provisions of this subchapter, it shall be unlawful for any person to:
 - (1) Advertise or operate all or part of a cemetery as a perpetual care or permanent maintenance cemetery without holding a valid permit issued by the Arkansas Cemetery Board; or
 - (2) Fail to place the required contributions into the permanent maintenance fund or to remove any principal of the permanent maintenance fund from trust.
- (b) Any person who is in willful violation of subsection (a) of this section shall be guilty of a felony and upon conviction shall be punished by a fine of not more than six thousand dollars (\$6,000) or by imprisonment in the state penitentiary for not more than six (6) years, or by both fine and imprisonment.

20-17-1019. Conveyance of lots.

- (a) An instrument of conveyance or deed for burial lots, plots, or parts thereof shall be issued to the purchaser upon complete payment of the purchase price.

- (b) Only the cemetery company or its agents may sell or convey lots, grave spaces, crypts, niches, or parts thereof except:
 - (1) The owner of any lot, grave space, niche, crypt, or part thereof may sell his lot or part thereof if he first has offered its transfer in writing to the cemetery company at the purchase price then being charged by the cemetery company for similar lots and the cemetery company refused the offer within thirty (30) days after the offer;
 - (2) An owner may convey or devise to the cemetery company his right and title in and to any lot, grave space, niche, crypt, or part thereof.
- (c) The secretary or other responsible officer of the cemetery company shall file and record in its books all instruments of transfer.
- (d) The conveyance shall be signed by the persons having proper authority.
- (e) Any mortgage or lien on the cemetery land by a permit holder shall not encumber any burial space that has been sold prior to the granting of the mortgage or creation of the lien.
- (f)
 - (1) To ensure that all burial spaces remain unencumbered, the permit holder shall file with the Arkansas Cemetery Board before execution of any mortgage or creation of any lien a notarized statement reflecting the specific description of the land to be affected by the mortgage or lien and a waiver or release by the proposed mortgagee or lienholder of any claim or right to any burial space for which an instrument of conveyance or deed has been or may be executed.
 - (2) The failure of a permit holder to comply with the requirements of this subsection shall be grounds for the board to require an additional contribution to the permanent maintenance fund of the cemetery in an amount not exceeding one thousand dollars (\$1,000) for each burial space encumbered.

20-17-1020. Unlawful act.

It shall be unlawful for any cemetery company to bury or inter a body in any path, alley, or walk.

20-17-1021. Disposition of contributions and fees.

- (a) All contributions imposed pursuant to this subchapter shall be deposited in the respective permanent maintenance fund of the cemetery company upon which the contribution is imposed.

- (b) All fees imposed pursuant to this subchapter shall be paid to the Arkansas Cemetery Board.

20-17-1022. Records required.

- (a) All cemetery companies shall make and keep accounts and records which shall indicate that they have made the required contributions to the permanent maintenance fund. The burden is upon the cemetery company to maintain the accounts and records.
- (b) All sales contracts and deeds, unless otherwise approved by the Arkansas Cemetery Board, issued by the cemetery company must be numbered prior to when they are executed by the cemetery company and must contain those items as the board by rule or order prescribes.

20-17-1023. Annual report of condition of cemetery company.

- (a) Within sixty (60) days after the end of the calendar year, each cemetery company shall file with the Arkansas Cemetery Board a report, under oath, of its condition, which report shall contain at least the following information:
 - (1) The name of the cemetery company, the location of the cemetery, the name of the person in charge of the records of the cemetery company, and the phone number of the company;
 - (2) The amount of sales of cemetery lots, graves, spaces, mausoleums, crypts, or niches for which payment has been made in full and certificates or deeds of conveyance have been issued during the preceding calendar year;
 - (3) The amounts paid into the permanent maintenance fund and the income received from the fund during the preceding calendar or fiscal year, including the total amount due the fund whether paid in or not, the amounts due the fund at the date of the report, and the amount expended for maintenance of the cemetery;
 - (4) The names and addresses of the owners of the cemetery company or the officers and directors of the company and stating any change of control which has occurred during the past fiscal or calendar year, the date of incorporation, and listing the resident agent and office if the cemetery company is a corporation;
 - (5) Such other information as the board may by rule or order require.
- (b) The report shall be accompanied by:

- (1) A filing fee of three hundred twenty-five dollars (\$325); and
- (2) (A) A fee of seven dollars (\$7.00) for each burial sale contract entered into after July 1, 2005, by the cemetery company regardless of the number of spaces sold under the contract regarding plots, crypts, and niches.
 - (B) (i) The first payment of fees under subdivision (b)(2)(A) of this section shall be due on or before March 1, 2006, and shall be based on the number of contract sales entered into during the period of July 1, 2005, through December 31, 2005.
 - (ii) Subsequent annual reports shall be based upon contract sales entered into for the previous calendar year.
- (c) (1) Failure by the cemetery company to make a timely filing of its annual report shall be grounds for an additional contribution to the permanent maintenance fund of fifty dollars (\$50.00) per day until the report is filed with the board.
- (2) If the cemetery company refuses to pay the contribution or fees, the board shall institute suit to recover the penalty and fee and costs and such other relief as the state in its judgment deems proper.
- (3) If the cemetery company shall fail to meet the requirements of this section, then the board shall apply to the Circuit Court of Pulaski County for the proper order to require a report.
- (d) The beginning and ending dates of the report shall coincide with the dates of the report of the trustee required in § 20-17-1015.
- (e) Upon receipt of a properly completed annual report from the trustee and the cemetery company, the board shall issue to the cemetery company an annual operating permit which shall be prominently displayed at the main entrance to the cemetery.

20-17-1024. Preexisting cemeteries.

- (a) All cemetery companies in existence at the time of the passage of this act shall be permitted to continue operation under their present permits except that those cemetery companies which are subject to this subchapter and have not been filing annual reports with the Arkansas Cemetery Board shall, by January 1, 1978, file the following information and shall be subject to the jurisdiction of the board:

- (1) The name of the owner and operator of the cemetery and a statement of the form of business organization, that is, corporation, nonprofit corporation, partnership, etc., along with a copy of the articles, bylaws, or applicable organization documents;
 - (2) The location and legal description of the cemetery, including a survey and map of the cemetery delineating the lots, plots, pathways, etc.;
 - (3) The rules and regulations for the use, care, management, and protection of the cemetery, including a list of lot prices and all charges and assessments made by the cemetery company;
 - (4) Details concerning the permanent maintenance trust fund including a copy of the trust agreement, the name of the trustee, the report of trustee, etc.;
 - (5) A copy of present permit and proof of registration with the Department of Health;
 - (6) A fee as the board by rule shall prescribe;
 - (7) A copy of the deed to the present cemetery company conveying land used as a cemetery and copies of any encumbrances, mortgages, etc., or a statement that there are none;
 - (8) The name and address of any officers, directors, managers, the degrees of ownership of each, and a statement concerning subsidiaries and affiliates or the organization controlling the cemetery company;
 - (9) A statement as to whether there are any mausoleums or similar structures; and
 - (10) Any additional information necessary to make the filing complete.
- (b) Failure to file the information shall result in the suspension or revocation of the permit, and the cemetery shall be considered not to be a registered cemetery. Until a new permit to operate a cemetery is obtained, all burials or sales shall be unlawful and the person operating the cemetery or allowing the burials shall be subject to the penalties and remedies set forth in §§ 20-17-1006, 20-17-1012(f), and 20-17-1018.

20-17-1025. Protection of cemeteries - Power to lend.

- (a) On August 1, 2001, the Arkansas Cemetery Board shall segregate one hundred eighty thousand dollars (\$180,000) within its general operating fund to be administered by the secretary of the board and only used to lend a court-appointed receiver or conservator the funds necessary to assure that a cemetery

will be properly maintained and will continue to be a going concern, including the funds necessary to pay any reasonable surety bond premium which is required to be posted by the court.

- (b) The board may take any legal action necessary against a cemetery company, receiver, or conservator to recover any funds loaned by the board to or for the benefit of the cemetery, the cemetery company, receiver, or conservator for the payment of maintenance expenses or unpaid loans.
- (c) Disbursement from such funds for loans to a receiver or conservator shall be made on a "first in, first out" basis as determined by the secretary of the board.
- (d) Donations to the board to fund such loans may be accepted by the secretary from any cemetery company, organization, or individual.
- (e) The board may waive payment or extend the payment period for any loan made to a receiver or conservator if the board determines that it is unlikely that the receiver or conservator has or will receive sufficient funds to repay the loan and that the funds were or are needed to maintain and operate the cemetery for the benefit of the lot owners and the general public.

20-17-1026. Annual permit fee.

- (a) By March 1 of each year, each permit holder shall pay to the Arkansas Cemetery Board a permit renewal fee in the amount of one hundred dollars (\$100).
- (b) All annual permit fees shall be classified as general funds of the board and shall be used to make loans to receivers and conservators as provided in § 20-17-1025.

20-17-1027. Duties of State Securities Department.

- (a) The State Securities Department shall assist the Arkansas Cemetery Board in the performance of its duties.
- (b) Assistance under subsection (a) of this section shall include, but is not limited to:
 - (1) Receiving and disseminating filings, questions, and requests on behalf of the board to the members of the board in advance of each meeting;
 - (2) Reviewing all filings, questions, and requests on behalf of the board and offering its opinion on the resolution of the matter;
 - (3) Issuing written responses regarding complaints received by the board;
 - (4) Scheduling all meetings in conjunction with the chair of the board;

- (5) Providing appropriate legal notices for all scheduled meetings;
- (6) Establishing a site where meeting of the board may be held;
- (7) Scheduling the services of a court reporter for all meetings of the board;
- (8) Providing legal representation and assistance through the legal staff of the department to the board in matters pertaining to this subchapter;
- (9) Acting as a liaison between the board and any court involved in the administration of any perpetual care cemetery placed in receivership;
- (10) Performing inspections at cemeteries for which complaints have been received by the board;
- (11) Performing special audits as necessary;
- (12) Scheduling regular audits of perpetual care cemeteries;
- (13) Administering the annual perpetual care reporting for all perpetual care cemeteries; and
- (14) Assisting in the formulation of legislation on behalf of the cemetery industry and the board.